U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-S-, INC.

DATE: FEB. 8, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a designer and marketer of semiconductor chips, seeks to employ the Beneficiary as a physical design engineer. It requests her classification as a member of the professions holding an advanced degree under the second-preference, immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based, "EB-2" category allows a U.S. business to sponsor a foreign professional with a master's degree, or a bachelor's degree and five years of experience, for lawful permanent resident status.

The Acting Director of the Nebraska Service Center denied the petition and the Petitioner's following motion to reconsider. The Director concluded that the accompanying certification from the U.S. Department of Labor (DOL) did not indicate the job's need for an advanced-degree professional.

On appeal, the Petitioner submits additional evidence and asserts that the Director misinterpreted a statement on the labor certification as requiring less than an advanced degree.

Upon *de novo* review, we will sustain the appeal.

A labor certification accompanying a petition for EB-2 classification must demonstrate an offered position's need for a professional holding an advanced degree. 8 C.F.R. § 204.5(k)(4)(i). The term "advanced degree" means "any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree." 8 C.F.R. § 204.5(k)(2).

In determining a position's minimum requirements, USCIS must examine the job offer portion of an accompanying labor certification. USCIS may neither ignore a certification term, nor impose additional requirements. *See, e.g., Tongatapu Woodcraft Haw., Ltd. v Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984) (holding that the immigration service "may make a *de novo* determination of whether the alien is in fact qualified to fill the certified job offer").

The Director found that the Petitioner's inclusion of additional language in part H.14 of the labor certification allowed for an applicant to qualify for the position with less than an advanced degree. As such, the Director concluded that the labor certification could not support the classification requested.

On appeal, the Petitioner asserts that the Director misinterpreted the statement included in H.14, which the Petitioner contends did not reduce the job's requirements below a master's degree and the stated skill set. The Petitioner argues that the statement "merely reiterated" those requirements. The Petitioner also submits copies of its recruitment materials which clearly indicate that the offered position requires, at a minimum, an advanced degree. Upon review of the additional evidence submitted on appeal, we find that a preponderance of the evidence demonstrates that the labor certification requires an advanced degree and therefore supports the Petitioner's request for EB-2 classification.

ORDER: The appeal is sustained.

Cite as *Matter of M-S-, Inc.*, ID# 982946 (AAO Feb. 8, 2018)